IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 5761 of 2004(S)

OA.669/2001 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH.
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PETITIONER:

ALI PATTAKKAL S/O.SHRI.P.MOHAMMED,
EX.SCIENTIST-ENGINEER 'SB', VSSC, TRIVANDRUM,
RESIDING AT KOLATH HOUSE, VILAYIL P.O.,
VIA KUZHIMANNA, MALAPPURAM DISTRICT.

BY ADV. SRI.S. JAMES VINCENT,
ADV. SRI. R. GOPAN,
ADV. SRI. TERRY V. JAMES.

RESPONDENTS:
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1. **THE DIRECTOR, VIKRAM SARABHAI SPACE CENTRE, ISRO POST, TRIVANDRUM-22.**

2. **THE CHAIRMAN, INDIAN SPACE RESEARCH ORGANISATION, ANTARIKSH BHAVAN, NEW BELL ROAD, BANGALORE-94.**

3. **THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF SPACE, MINISTRY OF SCIENCE & TECHNOLOGY, GOVERNMENT OF INDIA, NEW DELHI.**

BY ADV. SRI.S.PRASANTH, ADDL.CGSC,
SRI.C.N.RADHAKRISHNAN, SR.PANEL COUNSEL,
SRI.P.PARAMESWARAN NAIR,ASST.S.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.5761/2004-S:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE HEAD, PGA EST., VSSC, ON 10/05/1993.

EXT.P1.A: COPY OF THE COVERING LETTER NO. H-6.5 DTD. 15/06/1993 OF THE HEAD, PGA ESTT, VSSC FORWARDING THE PETITIONER'S PETITION TO THE INSPECTOR GENERAL OF POLICE (HQ).

EXT.P1.B: COPY OF THE PETITIONER'S PETITION DTD. 10/05/1993 FORWARDED TO THE I.G OF POLICE (HQ) BY THE VSSC.

EXT.P.2: COPY OF THE GOVERNMENT LETTER NO. 49825/J3/93/HOME DTD. 18/08/1993.

EXT.P.2.A: COPY OF THE GOVERNMENT LETTER NO. 54808/J3/93/HOME DTD. 10/09/1993.

EXT.P.2.B: COPY OF THE A/D CARD NO. 4158/CM/96/TVPM DTD. 16/04/1996 ISSUED TO THE PETITIONER.

EXT.P.3: COPY OF THE MEMORANDUM OF VSSC/DLS/DC/GEN/98/264 DTD. 11/06/1998 ISSUED TO PETITIONER.

EXT.P.4: COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER ON 24/06/1998.

EXT.P.5.SERIES: COPY OF THE MEMORANDUM NO. VSSC/DLS/DC/742/98/373 DTD. 10/08/1998 ISSUED BY THE DIRECTOR, VSSC, THE DISCIPLINARY AUTHORITY, ENCLOSING THE STATEMENT OF ARTICLES OF CHARGE, STATEMENT OF IMPUTATION OF MISCONDUCT, WITH ILLEGIBLE COPIES OF SEVEN DOCUMENTS.

EXT.P.6: COPY OF THE WRITTEN STATEMENT OF DEFENCE SUBMITTED BY THE PETITIONER ON 02/09/1998.

EXT.P.7: COPY OF THE DETAILED REPLY SUBMITTED BY THE PETITIONER TO THE HEAD, PGA, VSSC ON 05/10/1998.

EXT.P.8: COPY OF THE LETTER NO. VSSC/DLS/DC/743/98/465 DTD. 23/10/1998 ISSUED TO THE PETITIONER.

EXT.P.9: COPY OF THE LETTER NO. VSSC/DLS/DC/743/98/506 DTD. 16/11/1998 ISSUED TO THE PETITIONER.

EXT.P.10: COPY OF THE DETAILED PETITION SUBMITTED BY THE PETITIONER TO THE VSSC ON 01/12/1998.

EXT.P.11: COPY OF THE LETTER NO. VSSC/DLS/DC/743/98/573 DTD. 22/12/1998 ISSUED TO THE PETITIONER.

EXT.P.12: COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE VSSC ON 15/01/1999.

EXT.P.13: COPY OF THE LETTER NO. VSSC/RMT/SHN/IA/98 DTD. 04/02/1999 ISSUED TO THE PETITIONER.

EXT.P.14 SERIES: COPIES OF THE LAWYER'S NOTICE DTD. 29/01/1999, WITH POSTAL ENVELOPES ADDRESSED TO SHAHID KHALID AND MOHAMMED SALI LEBBA, WITH THE COMPUTER VERSION OF NOTICE.

EXT.P.15: COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE ENQUIRY OFFICER ON 27/04/1999.

EXT.P.16: COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE VSSC ON 10/05/1999.

EXT.P.17 SERIES: COPIES OF EXTRACTS OF THE SO-CALLED MARRIAGE REGISTER (ONE PAGE) THE MARRIAGE CERTIFICATE (ONE PAGE) AND PAGE NOS. 439, 453, 454, 455 AND 568 OF THE MINUTES BOOK FURNISHED TO THE PETITIONER AT THE ENQUIRY.

EXT.P.18: COPY OF THE AGREEMENT OF SALE DTD. 18/06/1998 PRODUCED BY THE PETITIONER IN THE ENQUIRY.

EXT.P.19: COPY OF THE PLAINT IN O.S. NO. 122/1999 OF THE FAMILY COURT, TRIVANDRUM.

EXT.P.20: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER THEREIN AS THE DEFENDANT ON 28/07/1999.

EXT.P.21: COPY OF THE WRITTEN BRIEF FILED BY THE PRESENTING OFFICER IN THE ENQUIRY.

EXT.P.22: COPY OF THE WRITTEN DEFENCE BRIEF SUBMITTED BY THE PETITIONER ON 15/11/999.

EXT.P.23: COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE DIRECTOR, VSSC, ON 25/11/1999.

EXT.P.24: COPY OF THE PETITION SUBMITTED BY THE PETITIONER ON 29/03/2000 TO THE HONOURABLE CHIEF MINISTER OF KERALA FOR CONTINUATION OF INVESTIGATION.

EXT.P.25: COPY OF THE PRIVATE COMPLAINT FILED BY THE PETITIONER ON 05/02/2004, VIZ, CMP. NO. 973/2004, IN THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II, NEDUMANGAD AGAINST ABDUL AZEEZ, SHAHIDA BEEVI AND OTHERS, FOR COMMITTING FORGERY AND FABRICATION OF MARRIAGE RECORDS.

W.P.(C). NO.5761/2004-S:

EXT.P.26: COPY OF THE REPORT SUBMITTED ON 03/03/2000 BY THE ENQUIRY OFFICER TO THE DISCIPLINARY AUTHORITY.

EXT.P.27: COPY OF THE COVERING LETTER NO. VSSC/DLS/DC/742/124 DTD. 07/03/2000 ISSUED BY THE DISCIPLINARY AUTHORITY TO THE PETITIONER, ENCLOSING THE DETAILED REPORT OF THE ENQUIRY AND CALLING FOR HIS EXPLANATION.

EXT.P.27.A: COPY OF THE REPORT OF ENQUIRY.

EXT.P.28: COPY OF THE OBJECTIONS DTD. 10/04/2000 SUBMITTED BY THE PETITIONER TO THE ENQUIRY REPORT.

EXT.P.28.A: COPY OF THE ANNEXURE-A ANALYSIS APPENDED TO EXT.P.28 OBJECTIONS.

EXT.P.29: COPY OF THE ORDER NO. VSSC/DLS/DC/742/98/494 DTD. 10/08/2000 ISSUED BY THE DISCIPLINARY AUTHORITY TO THE PETITIONER.

EXT.P.30: COPY OF THE APPEAL SUBMITTED BY THE PETITIONER TO THE CHAIRMAN, VSSC ON 02/09/2000.

EXT.P.31: COPY OF THE ORDER NO. HQ: ADMN: 12:37 DTD. 20/02/2001 OF THE CHAIRMAN, VSSC, DISMISSING THE APPEAL.

EXT.P.32: COPY OF THE ORDER DTD. 21/11/2003 IN O.A. NO. 669/2001 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, DISMISSING THE O.A. FILED BY THE PETITIONER.

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE JUDGMENT IN O.P. NO. 14153/1994 DTD. 20/07/95.

EXT.R1.B: COPY OF THE O.A. NO. 669/01 FILED BY ALI PATTAKAL.

EXT.R1.C: COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS.

EXT.R1.D: COPY OF THE REJOINDER FILED BY THE PETITIONER.

EXT.R1.E: COPY OF THE ADDITIONAL REJOINDER FILED BY THE PETITIONER.

EXT.R1.F: COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENTS AGAINST THE REJOINDER.

EXT.R1.G: COPY OF THE 2ND ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENTS AGAINST THE ADDITIONAL REJOINDER.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.5761 of 2004-S

Judgment

Balakrishnan Nair, J.

The petitioner challenges Ext.P32 order of the Central Administrative Tribunal, Ernakulam Bench in OA No.669/01. The applicant was serving as a Scientist/Engineer in the Vikram Sarabhai Space Centre. While so, he was served with a memo of charges dated 11.06.1998, alleging that he contracted a second marriage on 14.04.1996 with Smt.S.Shahida Beevi Jasmine while his first wife Smt.Ummu Salma was alive and the first marriage was subsisting. The said conduct was a misconduct int terms of the provisions of Rule 21(2) and Rule 3(i)(iii) of the CCS(Conduct) Rules, 1964. The petitioner submitted his written statement of defence to the charge sheet on 02.09.1998, denying the allegations leveled against him. Since the petitioner denied the allegations, an Enquiry Officer was appointed to enquire into the charges levelled against him and a full-fledged enquiry was held and the petitioner was found guilty of the charges. The said enquiry report was forwarded to the petitioner and he submitted his representation against the findings therein on 10.04.2000.The

Disciplinary Authority, after considering the objections of the petitioner, decided to accept the enquiry report and by order dated 10.08.2000, imposed on the applicant, a penalty of compulsory retirement from service. He filed an appeal on 02.09.2000 before the Appellate Authority. The said Authority affirmed the impugned order.

2. Challenging the orders of the original authority and the appellate authority, which were Exts.A1 and A2 in the OA, the petitioner approached the CAT. In the CAT, it was contended that the conclusions of the enquiry officer against the petitioner were perverse and there was procedural impropriety in holding the enquiry. The finding of the Disciplinary Authority that the marriage between the petitioner and Smt.Ummu Salma was subsisting, was erroneous. The documents which were marked were not subjected to scientific analysis. Even after repeated requests, their originals were also not produced. The evidence was not properly appreciated and the petitioner was not questioned on the circumstances which came out in evidence against him. The penalty imposed was disproportionate to the charges proved against him, it was contended.

3. The respondents in the OA resisted the application by filing a reply statement. They submitted that the enquiry was held properly. The petitioner was given the chance to cross examine the witnesses. He was permitted to produce his evidence and documents to prove his innocence. There was no procedural impropriety which vitiated the enquiry. The objections of the applicant to the documents produced, were considered by all the authorities and rejected. The technical Rules of evidence were not applicable in a domestic enquiry. The applicant, after the closure of the enquiry, was questioned by the enquiry officer on the circumstances against him at length. Having regard to the misconduct proved, the penalty imposed was just and proper, it is submitted.

4. The petitioner filed a rejoinder, reiterating his contentions. After hearing both sides, the Tribunal affirmed the orders impugned before it. The Tribunal noticed that there was some evidence on record to show that the petitioner contracted the second marriage. It is not a case of no evidence. The Tribunal also noticed the certified copies of the documents produced by the President of Karakulam Jama-ath, the marriage certificate issued by the General Secretary of Karakulam Jama-ath and the copy of the marriage

register signed by the petitioner, the father of the bride Shahida Beevi and two witnesses. The marriage photos were also taken into account. The Tribunal further noticed that the above pieces of evidence could not be satisfactorily explained by the petitioner. His case that he was trapped while he was under the influence of alcoholic drinks, lacked credence. The Tribunal also overruled the contention of the applicant that the marriage with the first wife was not subsisting. Thus, the Tribunal upheld the decisions of the Disciplinary Authority and the Appellate Authority.

5. The learned counsel for the petitioner attacked Ext.P13 and also the orders which were impugned before the CAT. According to him, the findings were perverse and they were arrived at based on no evidence. Certain documents were illegally marked. Photo copies of some documents were suddenly introduced during the course of the enquiry and the petitioner was denied a fair opportunity to challenge them. So, according to him, the entire enquiry was vitiated by procedural impropriety and the violation of the principles of natural justice. Therefore, the findings in such an enquiry cannot be pressed into service to impose a penalty of compulsory retirement from service, it is submitted.

6.We have gone through the original application, the statement of facts contained in paragraph 4 and also the grounds raised therein. Many of the grounds stated to be argued by the learned counsel, do not find a place in the OA. While judicially reviewing the order of the CAT, we are concerned, only with the grounds raised before it and its decisions thereon. The finding regarding the contracting of a second marriage is a finding of fact concurrently found by all the authorities below. We are not impressed by the argument of the learned counsel for the petitioner that it is a finding based on no evidence.

7. The statement of the second wife alone is sufficient to sustain the second marriage. Coupled with that, the explanation of the petitioner regarding the second marriage does not inspire confidence. So, if the lower authorities disbelieved the version of the petitioner and found him having contracted the second marriage, the said finding cannot be described as perverse or based on no evidence. If the said basic fact is proved, then the consequences must follow. We are not impressed by the argument that the punishment imposed is disproportionate to the gravity of the offence. Since it is compulsory retirement, he can get the terminal benefits and it is not a bar in

getting employment elsewhere also. We agree with the reasons and conclusions of the Tribunal. In the result, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

10.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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